

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

J. LEE,

Plaintiff,

No. 1:17-cv-01230-GJF-LF

v.

THE UNIVERSITY OF NEW MEXICO,
a public university, THE BOARD OF
REGENTS OF THE UNIVERSITY OF
NEW MEXICO, individually and in their
official capacities, ROBERT G. FRANK,
individually and in his official capacity,
LAURA VELE BUCHS, individually and in
her official capacity, HEATHER COWAN,
individually and in her official capacity,
FRANCIE CORDOVA, individually and in
her official capacity, MEGAN CHIBANGA,
individually and in her official capacity,

Defendants.

DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S DUE PROCESS CLAIMS

COME NOW Defendants The University of New Mexico and The Board of Regents of the University of New Mexico (collectively, “UNM”), and Robert G. Frank, Laura Vele Buchs, Heather Cowan, Francie Cordova, and Megan Chibanga (collectively, “Individual Defendants”), pursuant to Federal Rule of Civil Procedure 12(b)(6), and hereby seek dismissal of Plaintiff Jong Lee’s claims for violation of due process as pled in the Complaint for Injunctive and Declaratory Relief and Damages [Doc. 1-1]. As grounds therefor, Defendants state:

1. Plaintiff’s Section 1983 claim for damages against UNM and the Individual Defendants in their official capacities fails because UNM is not a “person”;

2. The Individual Defendants are entitled to qualified immunity from Plaintiff's Section 1983 claim for damages;
3. Plaintiff's claim for damages for violation of the New Mexico Constitution fails as a matter of law;
4. Plaintiff's claims for injunction and declaratory relief for alleged violations of due process should be dismissed;
5. Plaintiff does not concur in this Motion to Dismiss; and
6. Defendants have contemporaneously filed their Memorandum Brief in Support of Defendants' Motion to Dismiss Plaintiff's Due Process Claims.

WHEREFORE, Defendants hereby respectfully request that the Court dismiss with prejudice Plaintiff's claims for violation of due process.

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/s/ Quentin Smith
By: _____
Quentin Smith
Leah M. Stevens-Block

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendants' Motion to Dismiss Plaintiff's Due Process Claims was electronically filed using the CM/ECF system, which caused a copy to be sent by email to Plaintiff's counsel, Adams+Crow, P.C. (Arlyn Crow and Alana M. De Young), on this 21st day of December, 2017.

/s/ Quentin Smith

Quentin Smith